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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

EUGENE CIVIC ALLIANCE, an Oregon  
nonprofit corporation;

Plaintiff,

v.

CONTINENTAL DIVIDE INSURANCE  
COMPANY, a Colorado corporation;

Defendant.

Case No. 6: 17-cv-365

**Notice of Removal**

TO: THE CLERK OF THE COURT

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1441, Continental Divide Insurance Company (defendant) removes to this Court the state court action described below.

**The Removed Action**

1. This action was brought in the Circuit Court of the State of Oregon, Lane County, case number 17CV04334 and entitled *Eugene Civic Alliance v. Continental Divide Insurance Company*. The complaint is attached as Exhibit A.

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2. This is a civil action for which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) (diversity jurisdiction), and is therefore an action that defendant may remove to this Court pursuant to 28 U.S.C. § 1441.

### **Removal Is Timely**

3. The summons and complaint were served on defendant on March 1, 2017, which is less than 30 days before filing this notice of removal. A copy of the summons is attached as Exhibit B.

4. In filing this notice, defendant does not waive, and expressly reserves, its right to challenge service or to raise any other defenses.

5. No further proceedings have occurred in the state court action.

### **Diversity Jurisdiction Exists**

6. At all times relevant to this suit, plaintiff was an Oregon non-profit corporation and, for the purposes of diversity jurisdiction, an Oregon citizen pursuant to 28 U.S.C. § 1332(c)(1).

7. Defendant is not a citizen of Oregon. A suit by an insured against its insurer is not a “direct action” within the meaning of 28 U.S.C. § 1332(c)(1). *Searles v. Cincinnati Ins. Co.*, 998 F.2d 728, 729 (9th Cir. 1993). Thus, plaintiff’s citizenship is not imputed to defendant as its insurer under 28 U.S.C. § 1332(c)(1)(A). Defendant is a Colorado corporation with its principal place of business in Nebraska. Pursuant to 28 U.S.C. § 1332(c)(1), for purposes of diversity jurisdiction, defendant is a citizen of Colorado and Nebraska.

8. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Plaintiff alleges defendant breached a contract of insurance by failing to pay the full policy amount. Exhibit A, ¶13. Plaintiff alleges that as result, it is entitled to \$326,622.16 plus pre-judgment interest from defendant. *Id.* ¶14. Plaintiff also seeks its attorneys’ fees from defendant under a state statute. *Id.* ¶15.

### **Venue Is Proper for This Removal**

9. Venue for this removal is proper under 28 U.S.C. § 1441(a) because this Court is the district and division embracing the place where the state court action is pending.

### **Filing and Notice**

10. Pursuant to 28 U.S.C. § 1446(d) defendant is giving written notice of this filing to plaintiff's counsel and is filing a copy of this notice with the clerk of the Circuit Court of the State of Oregon, Lane County. A copy of the notice to the state court is attached as Exhibit C. A copy of the notice to adverse party is attached as Exhibit D.

### **Request for Opportunity to Brief and Argue**

11. If any question arises as to the propriety of the removal of this action, defendant requests the opportunity to brief and present evidence and oral argument in support of its position that this case is properly removable.

DATED: March 3, 2017

COSGRAVE VERGEER KESTER LLP

s/ Paul A. C. Berg

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Attorneys for Defendant

### Certificate of Service

I hereby certify that I served a true and correct copy of the foregoing **Notice of Removal** on the date indicated below by:

- ☒ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification.

If served by facsimile transmission, attached to this certificate is the printed confirmation of receipt of the document(s) generated by the transmitting machine. I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

Todd R. Johnston  
Brandon T. Moore  
Hershner Hunter LLP  
180 E 11th Ave  
PO Box 1475  
Eugene, OR 97440  
Of Attorneys for Plaintiff Eugene Civic Alliance

DATED: March 3, 2017

s/ Paul A. C. Berg  
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Paul A. C. Berg